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14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16  
17 DAVID CRAIG, an individual,  
18 JULIUS GUAY, an individual,  
19 JOHN RUSSO, an individual,  
20 JOSEPH VIGUERAS, an individual,  
21 on behalf of themselves and all others  
22 similarly situated,

Plaintiffs,

23 v.

24 CITY OF LOS ANGELES, a  
25 municipal entity, and LOS ANGELES  
26 POLICE DEPARTMENT, a  
municipal entity,

Defendants.

Case No.: 2:23-cv-06581

**COMPLAINT FOR DAMAGES**

**VIOLATIONS OF 38 U.S.C. §4301**  
***ET SEQ.***

**FILING FEE WAIVED PER 38**  
**U.S.C. § 4323(h)**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs DAVID CRAIG, JULIUS GUAY, JOHN RUSSO, and JOSEPH  
2 VIGUERAS (“Plaintiffs”), on behalf of themselves and all other similarly situated,  
3 hereby complain against Defendants CITY OF LOS ANGELES and LOS ANGELES  
4 POLICE DEPARTMENT, as follows:

5 **I. NATURE OF THE ACTION**

6 1. This is a civil action brought pursuant to the Uniformed Services  
7 Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 *et. seq.*  
8 (“USERRA”). It is brought by Plaintiffs on behalf of themselves and a nationwide Class  
9 of all persons similarly situated, including current and former employees of the City of  
10 Los Angeles Police Department who were or are currently serving in the reserve  
11 component of the United States Armed Forces and National Guard.

12 **II. PARTIES**

13 **A. Plaintiff David Craig**

14 2. Plaintiff David Craig (“Plaintiff Craig”) is a citizen of the United States  
15 and a resident of Idaho.

16 3. Plaintiff Craig was employed by Defendant and retired as a Police  
17 Lieutenant II in the Los Angeles Police Department. At all times relevant, Plaintiff  
18 Craig worked for Defendant in Los Angeles, California.

19 4. At all times relevant, Plaintiff Craig served as a commissioned officer in  
20 the California Army National Guard (“CA-ARNG”).

21 5. During the relevant times referenced herein, Plaintiff Craig was a qualified  
22 employee and member of the uniformed services as defined by 38 U.S.C. §4303(3) and  
23 (16).  
24

25 **B. Plaintiff Julius Guay**

26 6. Plaintiff Julius Guay (“Plaintiff Guay”) is a citizen of the United States and

1 a resident of the State of California.

2 7. Plaintiff Guay was employed by Defendant and retired as a Police  
3 Lieutenant II in the Los Angeles Police Department. At all times relevant, Plaintiff Guay  
4 worked for Defendant in Los Angeles, California.

5 8. At all times relevant, Plaintiff Guay served as a commissioned officer in  
6 the USAR.

7 9. During the relevant times referenced herein, Plaintiff Guay was a qualified  
8 employee and member of the uniformed services as defined by 38 U.S.C. §4303(3) and  
9 (16).

10 **C. Plaintiff John Russo**

11 10. Plaintiff John A. Russo (Plaintiff Russo) is a citizen of the United States  
12 and a resident of the state of California.

13 11. Plaintiff Russo was employed by Defendant and retired as a Police  
14 Lieutenant II in the Los Angeles Police Department. At all times relevant, Plaintiff  
15 Russo worked for Defendant in Los Angeles, California.

16 12. At all times relevant, Plaintiff Russo served as a member of the United  
17 States Marine Corps Reserve (“USMCR”) and subsequently the United States Coast  
18 Guard Reserve (“USCGR”).

19 13. During the relevant times referenced herein, Plaintiff Russo was a qualified  
20 employee and member of the uniformed services as defined by 38 U.S.C. §4303(3) and  
21 (16).

22 **D. Plaintiff Joseph Viguera**

23 14. Plaintiff Joseph Viguera (“Plaintiff Viguera”) is a citizen of the United  
24 States and a resident of the state of California.

25 15. Plaintiff Viguera was employed by Defendant and retired as a Police  
26

1 Lieutenant I in the Los Angeles Police Department. At all times relevant, Plaintiff  
2 Vigueras worked for Defendant in Los Angeles, California.

3 16. At all times relevant, Plaintiff Vigueras served as a member of the USAR.

4 17. During the relevant times reference herein, Plaintiff Vigueras was a  
5 qualified employee and member of the uniformed services as defined by 28 U.S.C.  
6 §4303(3) and (16).

7 **E. Defendants, the City of Los Angeles, and the Los Angeles Police**  
8 **Department**

9 18. Plaintiffs are informed, believe, and allege that Defendant CITY OF LOS  
10 ANGELES (“COLA”) is a municipal entity duly organized and existing under the  
11 Constitution and laws of the State of California and exercises authority in this judicial  
12 district. At all times relevant, COLA is and was an employer for purposes of 38 U.S.C.  
13 § 4303(4)(A) and § 4323(i).

14 19. Plaintiffs are informed, believe, and allege that Defendant LOS ANGELES  
15 POLICE DEPARTMENT (“LAPD”) is a municipal entity and an agency of Defendant  
16 CITY OF LOS ANGELES and exercises authority in this judicial district. At all times  
17 relevant, the LAPD is and was an employer for purposes of 38 U.S.C. § 4303(4)(A) and  
18 § 4323(i).

19 20. Whenever and wherever reference is made to individuals who are not  
20 named as defendants in this action, but were employees/agents of Defendants, or any of  
21 them herein, such individuals at all times acted on behalf of Defendants named in this  
22 action within the scope of their respective employments and agencies.

23 21. Whenever and wherever reference is made in this Complaint to any  
24 conduct of Defendants, or any of them, such allegations or references shall also be  
25 deemed to mean the conduct of each Defendant, acting individually, jointly and  
26 severally.

1           22. At all times relevant to this Complaint, Defendants were the agents and  
2 employees of their co-Defendants, and in doing the things alleged in this Complaint  
3 were acting within the course and scope of that agency and employment.

4           23. Plaintiffs do not seek any category of relief greater than or different from  
5 the relief sought for the Class of which Plaintiffs are members. This action, if successful,  
6 will enforce an important right affecting the public interest and would confer a  
7 significant benefit, whether pecuniary or non-pecuniary, on a large class of persons.  
8 Private enforcement is necessary and individual prosecution places a disproportionate  
9 financial burden on Plaintiffs in relation to Plaintiffs' stake in the matter.

10 **III. JURISDICTION AND VENUE**

11           24. The jurisdiction of this court is founded on federal question jurisdiction,  
12 28 U.S.C. §1331, as conferred by 38 U.S.C. §4323(b)(3).

13           25. Venue is proper because Defendant LAPD is a municipal entity and an  
14 agency of Defendant COLA, exercising authority in this judicial district, as provided in  
15 38 U.S.C. §4323(c)(1) and 28 U.S.C. §1391(b).

16           26. Pursuant to 38 U.S.C. § 4323(h), "No fees or court costs may be charged  
17 or taxed against any person claiming rights under [USERRA]".

18 **IV. GENERAL ALLEGATIONS**

19           27. LAPD has policies and practices of denying benefits of employment to its  
20 employees, including Plaintiffs and the Class, because of their military service  
21 obligations, in violation of USERRA. These violations include, but are not limited to:

22           A. Allowing vacation and sick time to accrue for employees on paid  
23 military leave but not for employees on comparable, unpaid military  
24 leave;

25           B. Providing differential pay to employees on military leave who perform  
26

- 1 certain types of military service, while denying differential pay to  
2 employees who performed other types of military service;  
3 C. Limiting the amount of paid military leave to 174 hours, in violation of  
4 the California Military and Veterans Code Section 395.02<sup>1</sup>;  
5 D. Reducing the number of credit hours converted from days to less than  
6 eight (8) hours per day for military leave only, while allowing eight (8)  
7 credit hours per days for other comparable forms of non-military leave;  
8 E. Requiring employees to submit three (3) copies of military orders to  
9 LAPD before military leave will be “approved”;  
10 F. Requiring employees to complete an Employee Report Form 15.7  
11 before military leave will be “approved”;  
12 G. Requiring employees to complete a Military Leave Notification Form  
13 (LAPD Form 1.36.05) to the Military Liaison before military leave will  
14 be “approved”;  
15 H. Requiring employees to submit DD-214 forms to LAPD upon  
16 completion of military leave;  
17 I. Requiring employees to undergo psychological testing upon  
18 completion of military leave; but not for other employees returning  
19 from other forms of leave; and  
20 J. Denying promotions to military servicemember employees who  
21 perform military service obligations.  
22

23 **A. Discrimination Against Plaintiff Craig Based on Military Status**

24 28. Plaintiff Craig enlisted in the United States Air Force Reserve (USAFR)  
25 in 1991, serving three years before transferring to the CA-ARNG in 1994, and then

26 <sup>1</sup> Plaintiffs will timely amend this Complaint to allege violations of the CA MVC after complying with applicable government claims process requirements.

1 receiving a commission to the rank of Second Lieutenant in 1996.

2 29. Plaintiff Craig began his employment with the LAPD as a sworn officer in  
3 January of 1995 as a Police Officer I. Throughout his twenty-eight-year career with the  
4 LAPD, he progressed through the ranks up to the rank of Police Lieutenant II.

5 30. In 2006, Plaintiff Craig was promoted to the position of Police Detective  
6 I, wherein he was hand-picked to conduct complex investigations into homicides,  
7 robberies, and other high-profile crimes in the 77<sup>th</sup> Criminal Gang Homicide Group and  
8 Southeast Patrol Divisions.

9 31. As a Police Sergeant I, Plaintiff Craig worked as a Patrol Supervisor in  
10 West Los Angeles and 77<sup>th</sup> Patrol Division. Subsequently, he was selected to the  
11 Operations South Bureau as the Special Events Coordinator, wherein he was  
12 responsible for planning police response to large-scale public events, such as football  
13 games, public demonstrations, parades, and other unusual occurrences.

14 32. As a Police Sergeant II, Plaintiff Craig worked in the Gang and Narcotics  
15 Division as the Narco Administrative Supervisor and the Gun Unit Supervisor.

16 33. As a Police Lieutenant I, Plaintiff Craig worked as the West Valley Patrol  
17 Watch Commander. During this time, Plaintiff Craig was tasked to fill in as the Patrol  
18 Commanding Officer several times during the absence of the Patrol Commanding  
19 Officer.

20 34. As a Police Lieutenant II, Plaintiff Craig worked as the Gang Impact Team  
21 Officer in Charge in the West Valley Division. Plaintiff Craig's academic  
22 accomplishments include a Bachelor of Arts degree in History, an Associates of Science  
23 in Aircraft Systems Maintenance, and a Master of Arts degree in Homeland Security  
24 (*cum laude*).

25 35. Specific to his duties as a law enforcement officer, Plaintiff Craig earned  
26

1 academic credentials by completing the Basic, Intermediate, Advanced, Supervisory,  
2 and Management Certificates from the California Commission on Police Officer  
3 Standards and Training (POST). He has also completed the POST Management course,  
4 the Intermediate Incident Command System course, the Advanced Command General  
5 Staff course, and the Enhanced All Hazards Incident Management Course.

6 36. Much of Plaintiff Craig's military experience contributes to his career in  
7 law enforcement. For example, when Plaintiff Craig was hand-selected to serve as a  
8 Police Advisor to the Kandahar Chief of Police in 2017-2018 while in support of  
9 Operation Freedom's Sentinel. In this role, he advised an Afghan General in all facets  
10 of Police training and employment.

11 37. During Plaintiff Craig's over thirty-two years military career, he has held  
12 several key leadership responsibilities, including command of a Field Artillery  
13 Battalion composed of over five hundred soldiers which was recognized as the best in  
14 the California Army National Guard in the metrics of military readiness and retention.  
15 His many accomplishments have been recognized by award of the Combat Action  
16 Badge, Bronze Star Medal, Meritorious Service Medal, Army Commendation Medal,  
17 Air Force Commendation Medal, Army Achievement Medal, Air Force Achievement  
18 Medal, Military Outstanding Volunteer Service Medal, and the California Medal for  
19 Merit.

20 38. Throughout the entirety of his career with the LAPD, Plaintiff Craig  
21 attended monthly inactive duty training periods, or "battle assembly," per his military  
22 service obligation with the CA-ARNG. These lasted approximately two-to-four days  
23 each, and generally occurred during the weekend. However, some of the battle  
24 assemblies would require Plaintiff Craig to take leave from his employment with LAPD  
25 during the week to accommodate the CA-ARNG training requirements.  
26



1           39. In addition to monthly battle assembly, Plaintiff Craig was generally  
2 required to take leave from his employment with LAPD to conduct “annual training”  
3 every year. Annual training, or “AT,” generally lasted two-to-three weeks, but could be  
4 longer depending on the specific training conducted.

5           40. Plaintiff Craig also executed long-term active-duty military orders seven  
6 times during his employment with LAPD. These mobilizations varied in duration and  
7 location, but include months-long deployments to Afghanistan, Iraq, Kosovo, and  
8 others in support of domestic mission, such as responses to wildfires, riots, and  
9 homeland security matters.

10           41. In early 2021, Plaintiff Craig took and passed the written and oral  
11 examination for promotion to the rank of Captain I.

12           42. On April 28, 2021, the Administrative Services Bureau of the LAPD  
13 announced the names and “whole score grades” of the candidates for promotion to the  
14 rank of Captain I. Plaintiff Craig was placed in the Rank 4 category, with a “whole score  
15 grade” of 80.

16           43. The April 28, 2021 list included thirty-nine candidates for promotion to  
17 Captain I in the Rank 1, 2 and 3 categories that scored higher than Plaintiff Craig,  
18 twenty-eight candidates that scored the same as Plaintiff Craig in the Rank 4 category,  
19 and at least six other candidates that scored less than Plaintiff Craig in the Rank 5, and  
20 Rank 6 categories.

21           44. Upon information and belief, Plaintiff Craig’s qualifications for promotion  
22 were superior to many of the candidates selected for promotion to Captain I in the LAPD  
23 from the April 28, 2021 list. Plaintiff Craig had greater experience, training, education,  
24 credentials, and overall performance than several candidates selected for promotion to  
25 Captain I.  
26

1           45. Despite Plaintiff Craig's qualifications, he was not selected for promotion  
2 to Captain I.

3           46. Upon information and belief, approximately fifty candidates from the  
4 April 28, 2021 list were promoted to the rank of Captain I.

5           47. Upon information and belief, none of the candidates selected for promotion  
6 to Captain I from the April 28, 2021 list had a current military service obligation.

7           48. Upon information and belief, the April 28, 2021 list included at least two  
8 other candidates eligible for promotion to the rank of Captain I with current military  
9 service obligations, Mr. Eric Quan in the Rank 3 Category, and Mr. Jose Martinez in  
10 the Rank 4 category. They were members of the USAR and United States Air Force  
11 Reserve (USAFR), respectively.

12           49. Upon information and belief, neither Mr. Quan nor Mr. Martinez were  
13 selected for promotion by the LAPD to Captain I.

14           50. Upon information and belief, LAPD promoted several candidates from the  
15 April 28, 2021 list to the rank of Captain I who scored in the Rank 4, Rank 5, and Rank  
16 6 categories.

17           51. Plaintiff Craig was not ranked higher on the April 28, 2021 list and not  
18 selected for promotion to Captain I because of his continued service with the CA-  
19 ARNG. Specifically, that the LAPD unlawfully denied his promotion to Captain I  
20 because they did not want an employee in the rank of Captain I who also had a military  
21 service obligation and potentially would be required to take military leave.

22           52. Believing his continued military service would prevent him from being  
23 selected for promotion to Captain I despite his extensive credentials and qualifications  
24 for the position, Plaintiff Craig retired from the LAPD as a Police Lieutenant II,  
25 effective February 25, 2023.  
26

**B. Discrimination Against Plaintiff Guay Based on Military Status**

53. Plaintiff Guay enlisted in the United States Army in 1983. He performed active-duty military service for approximately seven years, then joined the California Army National Guard on an active-duty counter-drug Task Force for the state of California for approximately two years before ultimately joining the United States Army Reserve in 1994.

54. Plaintiff Guay began his employment with the LAPD as a sworn officer in July of 1993 as a Police Officer I. Throughout his twenty-seven-year career with the LAPD, he progressed through the ranks up to the position of Police Lieutenant II.

55. As a Police Sergeant I, Plaintiff Guay worked as a supervisor in the Gang Enforcement Detail, a Patrol supervisor in the Wilshire and Southwest Areas, and as an Area and Patrol Adjutant in the Southeast Area, West Los Angeles, and Southwest Areas, and was individually selected to lead a transition team to establish the new Olympic Area Patrol Division.

56. As a Police Sergeant II, Plaintiff Guay worked as an Aide to the Commander at the Office of Operations, the Officer-in-Charge for the for the 77<sup>th</sup> Area Community Law Enforcement and Recovery Unit, the Assistant Watch Commander for the Olympic Area, and as the Officer-in-Charge of the Olympic Area Community Relations Office and Senior Lead Office.

57. As a Police Lieutenant I, Plaintiff Guay worked as a Watch Commander at the Newton Patrol Division and was specifically asked to assume duties as a Watch Commander at the 77<sup>th</sup> Area due to leadership needs. During this time, Plaintiff Guay was also selected to serve as the Acting Patrol Commanding Officer for both the Newton and 77<sup>th</sup> Areas.

58. As a Police Lieutenant II, Plaintiff Guay worked as a Detective

1 Commanding Officer, an Acting Patrol Commanding Officer, and as the Fugitive  
2 Warrant Section Officer-in-Charge. These assignments are generally considered to be  
3 “coveted” among Police Lieutenants in the LAPD and only offered to the most qualified  
4 candidates.

5 59. Plaintiff Guay’s academic accomplishments include a Bachelor of Arts  
6 degree in Criminal Justice, a Master’s degree in Public Administration, and a Doctor of  
7 Philosophy degree in Public Safety and Leadership.

8 60. Specific to his duties as a law enforcement officer, Plaintiff Guay earned  
9 academic credentials by completing the Basic, Intermediate, Advanced, Supervisory,  
10 and Management Certificates from the California Commission on Police Officer  
11 Standards and Training (POST). He has also completed the POST Management course,  
12 POST Command Officer course, the Sherman Block Supervisory Leadership Institute  
13 course, the Situational Leadership I and II courses, and the Federal Bureau of  
14 Investigation’s National Academy – which is only offered by the LAPD to highly-  
15 qualified leaders.

16 61. Throughout the entirety of his career with the LAPD, Plaintiff Guay  
17 attended monthly inactive duty training periods, or “battle assembly,” per his military  
18 service obligation with the USAR. These lasted approximately two-to-four days each,  
19 and generally occurred during the weekend. However, some of the battle assemblies  
20 would require Plaintiff Guay to take leave from his employment with LAPD during the  
21 week to accommodate the USAR training requirements.

22 62. In addition to monthly battle assembly, Plaintiff Guay was generally  
23 required to take leave from his employment with LAPD to conduct “annual training”  
24 every year. Annual training, or “AT,” generally lasted two-to-three weeks, but could be  
25 longer depending on the specific training conducted.  
26

1        63. Plaintiff Guay also executed long-term active-duty military orders five  
2 times during his employment with LAPD. These mobilizations varied in duration and  
3 location, but include months-long deployments to Afghanistan, Iraq, Columbia, and  
4 Europe.

5        64. For every military AT and mobilization that Plaintiff Guay executed  
6 during his LAPD career, the LAPD required Plaintiff Guay to produce three copies of  
7 his official orders before military leave was approved. However, the LAPD would only  
8 accept the orders if they were “certified” by another member of the LAPD who was also  
9 serving in the military, and held a military rank of E-7 and above or were a  
10 commissioned officer. The “certification” process required the other LAPD employee  
11 also serving in the military to sign Plaintiff Guay’s orders, despite the other employee  
12 potentially not being in the same military unit or even the same military service branch  
13 as Plaintiff Guay.

14        65. The vast majority of Plaintiff Guay’s military experience is in law  
15 enforcement. In this capacity, Plaintiff Guay led several teams with significant  
16 responsibilities. For example: Plaintiff Guay served as a United States Army Criminal  
17 Investigation Division (CID) Special Agent – both as an enlisted member and then as  
18 an officer; the Officer-in-Charge of the Drug Suppression Team, working with the  
19 German police as well as the German federal customs agency to reduce the trafficking  
20 and sales of illicit drugs; as the OIC of the Counter-Assault Team, in which he led U.S.  
21 service-members trained to operate in high-threat environments and also in dignitary  
22 protection; and served on a Close Protection Team for the United States Secretary of  
23 Defense and the Chairman of the Joint Chiefs of Staff.

24        66. During Plaintiff Guay’s over thirty-five years military career, he has  
25 successfully commanded five separate units, and held multiple assignments as an  
26

1 enlisted soldier, warrant officer, and commissioned officer. His performance has been  
2 recognized through the award of several military decorations – including the Bronze  
3 Star Medal, the Defense Meritorious Service Medal, three Meritorious Service Medals,  
4 and three Joint Service Commendation Medals.

5 67. The skills Plaintiff Guay developed throughout his military experience  
6 significantly contributed to his high level of performance in the LAPD.

7 68. Upon information and belief, the minimum requirements for promotion to  
8 the position of Captain I in the LAPD is completion of a probationary period as a Police  
9 Lieutenant, a valid California driver's license, and meeting certain medical and physical  
10 guidelines. Plaintiff Guay met the experiential and pre-requisite requirements for  
11 selection to the rank of Captain I.

12 69. In 2016, Plaintiff Guay took and passed the written and oral examination  
13 for promotion to the rank of Captain I.

14 70. On November 21, 2016, the Administrative Services Bureau of the LAPD  
15 announced the names and "whole score grades" of the candidates for promotion to the  
16 rank of Captain. Plaintiff Guay was the top placement in the Rank 2 category, with a  
17 "whole score grade" of 90. There were only four other candidates who scored above  
18 him at 91, ten other candidates with the same score of 90, and forty-nine candidates  
19 who scored below him in the Rank 3, 4, 5, and 6 categories.

20 71. Upon information and belief, twenty-eight of the candidates from the  
21 November 21, 2016 list were selected for promotion to Captain I over the following  
22 months.

23 72. Upon information and belief, Plaintiff Guay's qualifications for promotion  
24 were superior to many of the twenty-eight candidates selected for promotion to Captain  
25 I in the LAPD from the November 21, 2016 list. Plaintiff Guay had greater experience,  
26

1 training, education, credentials, and overall performance than several candidates  
2 selected for promotion to Captain I.

3 73. Despite Plaintiff Guay's qualifications for promotion, he was not selected  
4 for promotion to Captain I.

5 74. Plaintiff Guay sought out several members of the LAPD command staff to  
6 inquire as to why he was not selected for promotion to Captain I. Specifically, Plaintiff  
7 Guay contacted the following leaders at the LAPD: Assistant Chiefs Mike Moore and  
8 Robert Arcos; Deputy Chiefs Bill Scott, Jon Peters, Dennis Kato, and Debra McCarthy;  
9 Commanders Dennis McCarthy, Howard Leslie, and Robert Lopez, and Captains  
10 Stephen Carmona, Steve Lurie, and Gerald Woodyard. None of the persons Plaintiff  
11 Guay spoke with identified any negative aspect of his performance while employed  
12 with the LAPD. Both Assistant Chief Arcos and Captain Carmona even stated that  
13 Plaintiff Guay "was probably the most qualified guy on the list." Upon information and  
14 belief, Deputy Chief Dennis Kato awarded Plaintiff Guay the highest score of all  
15 eligible candidates for promotion during the 2016 Captain I promotion process.

16 75. One of Plaintiff Guay's peers named in the November 21, 2016 list,  
17 candidate Steven Embrich, was placed in the Rank 4 category. Upon information and  
18 belief, Mr. Embrich served in the USAR while employed at LAPD.

19 76. Upon information and belief, Mr. Embrich was selected for promotion to  
20 Captain I on the condition that he retire from his military position with the USAR.

21 77. Upon information and belief, Mr. Embrich retired from his position with  
22 USAR, and was subsequently promoted to the position of Captain I in the LAPD.

23 78. Plaintiff Guay was not selected for promotion to Captain I with the LAPD  
24 because of his continued military service with the USAR. Specifically, that the LAPD  
25 unlawfully denied his promotion to Captain I because they did not want someone in the  
26



1 rank of Captain who also had a military service obligation, and would be potentially  
2 required to take military leave.

3 79. In 2019, Plaintiff Guay provided notice to the LAPD that he was  
4 mobilizing on active-duty orders with the USAR in Europe. In response, his supervisor,  
5 Captain Stephen Carmona stated that Plaintiff Guay was deploying because he was  
6 “mad that he didn’t get picked for Captain.”

7 80. Rather than face the embarrassment and humiliation of not being selected  
8 for promotion to Captain I again, despite his extensive credentials and qualifications for  
9 the position, Plaintiff Guay chose to retire from the LAPD as a Police Lieutenant II,  
10 effective January 31, 2020.

11 **C. Discrimination Against Plaintiff Russo Based on Military Status**

12 81. Plaintiff Russo enlisted in the United States Marine Corps (USMC) in 1985  
13 and performed approximately four years of active-duty military service. He was recalled  
14 from the Individual Ready Reserve to support the Gulf War, and then completed his  
15 initial enlistment in 1993. Plaintiff Russo then enlisted in the United State Coast Guard  
16 Reserve (USCGR) in 2005, where he has continually served, and currently holds the  
17 rank of E-7.

18 82. Plaintiff Russo began his employment with the LAPD as a sworn officer  
19 in April of 1990 as a Police Officer I. Throughout his thirty-two-year career with the  
20 LAPD, he progressed through the ranks up to the position of Police Lieutenant II.

21 83. As a Police Sergeant I, Plaintiff Russo served as a Patrol Supervisor for  
22 three separate divisions in Los Angeles.

23 84. As a Police Sergeant II, Plaintiff Russo served as an Officer-in-Charge in  
24 Internal Affairs, a Consent Decree Liaison in the Professional Standards Bureau, and as  
25 the Assistant Chief’s Aide in the Office of Support Services.  
26



1           85. As a Police Lieutenant I, Plaintiff Russo worked as a Watch Commander  
2 in the Mission Division and then as the Section Officer-in-Charge in the Security  
3 Services Division.

4           86. As a Police Lieutenant II, Plaintiff Russo worked as the Adjutant in the  
5 Office of Support Services and then as the Adjutant in the Administrative Services  
6 Bureau.

7           87. Plaintiff Russo's academic accomplishments include an Associate's  
8 Degree in History, a Bachelor of Arts degree in History, and he is currently pursuing a  
9 Master's degree in History.

10           88. Specific to his duties as a law enforcement officer, Plaintiff Russo earned  
11 professional law enforcement credentials by completing the Basic, Intermediate,  
12 Advanced, Supervisory, and Management Certificates from the California Commission  
13 on Police Officer Standards and Training (POST). He has also completed the  
14 Department of Homeland Security Advanced Incident Command System course, and  
15 the LAPD West Point Leadership Program.

16           89. Since July 2005 while employed with the LAPD, Plaintiff Russo attended  
17 monthly inactive duty training periods per his military service obligation with the  
18 USCGR. These lasted approximately two-to-four days each, and generally occurred  
19 during the weekend. However, some of the battle assemblies would require Plaintiff  
20 Russo to take leave from his employment with LAPD during the work week to  
21 accommodate the USCGR training requirements.

22           90. In addition to monthly battle assembly, Plaintiff Russo was generally  
23 required to take leave from his employment with LAPD to conduct "annual training"  
24 every year. Annual training, or "AT," generally lasted two-to-three weeks, but could be  
25 longer depending on the specific training conducted.  
26

1           91. Plaintiff Russo also executed long-term active-duty military orders two  
2 times during his employment with LAPD. These mobilizations varied in duration and  
3 location, but include a deployment to Kuwait, and a mobilization with the Coast Guard  
4 Investigative Service in Washington D.C.

5           92. In 2020, Plaintiff Russo took and passed the written and oral examination  
6 for promotion to the rank of Captain I.

7           93. On April 1, 2021, Plaintiff Russo began three-month active-duty military  
8 orders in support of the USCGR's response to the Coronavirus Disease 2019 ("COVID-  
9 19") pandemic, lasting until June 30, 2021.

10           94. On April 28, 2021, the Administrative Services Bureau of the LAPD  
11 announced the names and "whole score grades" of the candidates for promotion to the  
12 rank of Captain I. Plaintiff Russo was placed in the Rank 3 category, with a "whole  
13 score grade" of 81.

14           95. The April 28, 2021, list included fifteen candidates for promotion to the  
15 rank of Captain I in the Rank 1 and Rank 2 categories that scored higher than Plaintiff  
16 Russo, twenty-three candidates that scored the same as Plaintiff Russo in the Rank 3  
17 category, and at least 34 other candidates that scored less than Plaintiff Russo in the  
18 Rank 4, Rank 5, and Rank 6 categories.

19           96. On May 6, 2021, Police Officer II Dale Tongson, employed by Defendants  
20 in the Medical Liaison Section of the Personnel Division, emailed Police Sergeant  
21 Susan Mickles requesting verification on the "work status" of Plaintiff Russo.  
22 Specifically, Mr. Tongson stated that he was "conducting the medical work status for  
23 the Captain [sic] list... I show [Plaintiff Russo] is out on Military Leave... is that  
24 correct... does he have a return date?" Sergeant Mickles responded that Plaintiff had  
25 no medical restrictions, and that she would obtain Plaintiff Russo's return date from the  
26

1 Military Liaison Officer.

2 97. Upon information and belief, Defendant's Personnel Division would have  
3 been aware of Plaintiff Russo's return date because it had a copy of Plaintiff Russo's  
4 military orders.

5 98. Shortly after Plaintiff Russo completed the three-month military orders in  
6 support of the USCGR's response to the COVID-19 pandemic, and returned to his  
7 employment with the LAPD in late summer of 2021, Plaintiff Russo received a  
8 telephone call from Sergeant II (currently believed to be a Lieutenant I) Leon Tsap, who  
9 worked in the LAPD Office of the Chief of State. Upon information and belief, the  
10 Chief of Staff reports directly to the Chief of Police. During the phone call Sergeant II  
11 Tsap asked Plaintiff Russo "do you really want to be a Captain... I thought you were all  
12 in with the military." Plaintiff Russo responded that he did want to be a Captain in the  
13 LAPD, otherwise he would not have taken the test. Feeling dismayed by the question  
14 from Sergeant II Tsap, Plaintiff Russo reported the conversation to Police Administrator  
15 III Annemarie Sauer, CO, ASB.

16 99. Upon information and belief, Plaintiff Russo's qualifications for  
17 promotion were superior to many of the candidates selected for promotion to Captain I  
18 in the LAPD from April 28, 2021 list. Plaintiff Russo had greater experience, training,  
19 education, credentials, and overall performance than several candidates selected for  
20 promotion to Captain I.

21 100. Despite Plaintiff Russo's qualifications, he was not selected for promotion  
22 to Captain.

23 101. Upon information and belief, approximately fifty candidates from the  
24 April 28, 2021 list were promoted to the rank of Captain I.

25 102. Upon information and belief, none of the candidates selected for promotion  
26

1 to the rank of Captain I from the April 28, 2021 list had a current military service  
2 obligation.

3 103. Upon information and belief, the April 28, 2021 list included at least two  
4 other candidates eligible for promotion to the rank of Captain I with military service  
5 obligations, Mr. Eric Quan in the Rank 3 Category, and Mr. Jose Martinez in the Rank  
6 4 category. They were members of the USAR and United States Air Force Reserve  
7 (USAFR), respectively.

8 104. Upon information and belief, neither Mr. Quan nor Mr. Martinez were  
9 selected for promotion by the LAPD to rank of Captain I.

10 105. Upon information and belief, LAPD promoted several candidates from the  
11 April 28, 2021 list to the rank of Captain I who scored in the Rank 4, Rank 5, and Rank  
12 6 categories.

13 106. Plaintiff Russo was not ranked higher on the April 28, 2021 list and not  
14 selected for promotion to Captain I with the LAPD because of his continued service  
15 with the USCGR. Specifically, that the LAPD unlawfully denied his promotion to  
16 Captain I because they did not want an employee in the rank of Captain I who also had  
17 a military service obligation and would be potentially required to take military leave.

18 107. Believing his continued military service would prevent him from being  
19 selected for promotion to Captain I despite his extensive credentials and qualifications  
20 for the position, Plaintiff Russo retired from the LAPD as a Police Lieutenant II,  
21 effective June 30, 2022.

22 **D. Discrimination Against Plaintiff Vigueras Based on Military Status**

23 108. Plaintiff Vigueras enlisted in the United States Army in 1980. He  
24 performed active-duty military service for approximately eight years, then joined the  
25 USAR for two years until 1990. Then, Plaintiff Vigueras spent nine years in the  
26

1 California Army National Guard, before transitioning back to the USAR, where he  
2 served until his retirement in 2012. Shortly after, Plaintiff Vigueras was recalled from  
3 retirement, and continued his service in the USAR until his second retirement on August  
4 1, 2022.

5 109. Plaintiff Vigueras began his employment with the LAPD as a sworn officer  
6 in February of 1995 as a Police Officer I. Throughout his twenty-seven-year career with  
7 the LAPD, he progressed through the ranks up to the position of Police Lieutenant I.

8 110. As a Police Sergeant I, Plaintiff Vigueras worked as a Patrol Field  
9 Supervisor, a Gang Enforcement Detail Supervisor, a Parole Compliance Unit  
10 Supervisor, and a Patrol and Area Adjutant.

11 111. As a Police Sergeant II, Plaintiff Vigueras worked as an Internal Affairs  
12 Investigator.

13 112. As a Police Lieutenant I, Plaintiff Vigueras worked as a Patrol Watch  
14 Commander, and the Officer-in-Charge for the Operations South Bureau Complaint  
15 Unit.

16 113. Plaintiff Vigueras' academic accomplishments include a Bachelor of Arts  
17 degree in Political Science, a Master's degree in Public Administration, and Graduate  
18 Certificates from the Harvard John F. Kennedy School of Government and the  
19 University of Pennsylvania Wharton School of Business.

20 114. Specific to his duties as a law enforcement officer, Plaintiff Vigueras  
21 earned academic credentials by completing the Basic, Intermediate, Advanced,  
22 Supervisory, and Management Certificates from the California POST. He has also  
23 completed the West Point Leadership Program, and the Sherman Block Supervisory  
24 Leadership Institute course.

25 115. Throughout the entirety of his career with the LAPD, Plaintiff Vigueras  
26

1 attended monthly inactive duty training periods, or “battle assembly,” per his military  
2 service obligation with the USAR. These lasted approximately two-to-four days each,  
3 and generally occurred during the weekend. However, some of the battle assemblies  
4 would require Plaintiff Vigueras to take leave from his employment with LAPD during  
5 the week to accommodate the USAR training requirements.

6 116. In addition to monthly battle assembly, Plaintiff Vigueras was generally  
7 required to take leave from his employment with LAPD to conduct “annual training”  
8 every year. Annual training, or “AT,” generally lasted two-to-three weeks, but could be  
9 longer depending on the specific training conducted.

10 117. Plaintiff Vigueras also executed long-term active-duty military orders  
11 three times during his employment with LAPD. These mobilizations varied in duration  
12 and location, but include months-long deployments to Afghanistan, Iraq, and other  
13 countries throughout the Middle East.

14 118. In 2014, Plaintiff Vigueras was ordered to active duty by the USAR to  
15 support Operation Enduring Freedom. He was deployed for eighteen months. During  
16 this deployment, Plaintiff Vigueras developed plans for counterterror training for use  
17 during partnering missions with friendly host-nation military forces throughout the  
18 Middle East.

19 119. Upon his return to employment at LAPD in August 2016, Plaintiff  
20 Vigueras was met with hostility from his commanding officers, Captain Al Pasos,  
21 Captain Al Neal, and Captain Louis Paglialonga for taking military leave.

22 120. On several occasions after Plaintiff Vigueras’s return to work, Captain  
23 Paglialonga told Plaintiff Vigueras that Lieutenants “should not deploy” and that  
24 Plaintiff Vigueras “should think about leaving the [military] service” if he wanted to be  
25 promoted in the LAPD.  
26

1 121. Plaintiff Vigueras was subjected to daily harassment, discrimination and  
2 humiliation by Captains Neal and Pasos. He was called to Captain Pasos' officer over  
3 the station intercom approximately twice a week and then "dressed down" by Captains  
4 Pasos and Captain Neal over the amount of military leave he had taken, and how his  
5 continued military service was not good for his career in the LAPD. They accused  
6 Plaintiff Vigueras of shirking his responsibilities as a law enforcement officer, and  
7 threatened him with demotion and termination because Plaintiff Vigueras was still in  
8 his probationary period as a Lieutenant I.

9 122. Captains Pasos, Neal, and Paglialonga's treatment of Plaintiff Vigueras  
10 undermined his authority over his subordinates. When Plaintiff Vigueras asked Captain  
11 Pasos if it was necessary to continue calling him over the intercom in front of his  
12 subordinates, Captain Pasos responded that he "wanted to get [Plaintiff Vigueras']  
13 attention."

14 123. Captain Pasos also told Plaintiff Vigueras that he was not allowed to take  
15 time off to attend his USAR AT event because of the amount of time he had already  
16 taken for military leave.

17 124. Upon information and belief, Captain Pasos contacted officials at the City  
18 of Los Angeles to see if there was any way to prevent Plaintiff Vigueras from going on  
19 his military AT in 2017.

20 125. Captains Pasos, Neal, and Paglialonga's hostile treatment against Plaintiff  
21 Vigueras was so pervasive, that Plaintiff Vigueras had to reach out to LAPD Military  
22 Liaison, Mr. Ryan White to intervene and advise that they could not retaliate against  
23 Plaintiff Vigueras for taking military leave, or prevent him from conducting his military  
24 service obligation, such as his AT.

25 126. In March of 2017, Plaintiff Vigueras requested to attend the Enhanced  
26



1 Incident Management/Unified Command course offered by the University of Texas  
2 A&M Engineering Extension Service (TEEX), on behalf of the Department of  
3 Homeland Security. The LAPD regularly permitted their employees to take this  
4 training.

5 127. Captain Al Neal told Plaintiff Viguera that he would not approve the  
6 training due to the amount of time Plaintiff Viguera had taken off for military leave,  
7 and that his denial to approve the training would be supported by the LAPD Operations  
8 South Bureau Deputy Chief. Plaintiff Viguera had to use his own accrued regular days  
9 off to attend the TEEX training in April of 2017.

10 128. In 2018, Plaintiff Viguera took and passed the written and oral  
11 examination for promotion to the rank of Captain I.

12 129. On December 4, 2018, the Personnel and Training Bureau of the LAPD  
13 announced the names and “whole score grades” of the candidates for promotion to the  
14 rank of Captain I. Plaintiff Viguera was placed in the Rank 6 category, with a “whole  
15 score grade” of 70. Rank 6 is the lowest band for promotion eligible candidates to  
16 Captain I.

17 130. Upon information and belief, Plaintiff Viguera’s qualifications for  
18 promotion were superior to many of the candidates selected for promotion to Captain I  
19 in the LAPD from December 4, 2018 list. Plaintiff Viguera had greater experience,  
20 training, education, credentials, and overall performance than several candidates  
21 selected for promotion to Captain I.

22 131. Despite Plaintiff Viguera’s qualifications, he was not selected for  
23 promotion to Captain.

24 132. Plaintiff Viguera was not ranked higher on the December 4, 2018 list and  
25 not selected for promotion to Captain I with the LAPD because of his continued service  
26



1 with the USAR. Specifically, LAPD unlawfully lowered his placement for promotion  
2 into the Rank 6 category and denied his promotion to Captain I because it did not want  
3 an employee in the rank of Captain I who also had a military service obligation and  
4 would be potentially required to take military leave.

5 133. Upon information and belief, the December 4, 2018 list included at least  
6 two other candidates eligible for promotion to the rank of Captain I with military service  
7 obligations, Mr. Eric Quan in the Rank 3 Category, and Mr. Jose Martinez in the Rank  
8 4 category. They were members of the USAR and United States Air Force Reserve  
9 (USAFR), respectively.

10 134. Upon information and belief, neither Mr. Quan nor Mr. Martinez were  
11 selected for promotion by the LAPD to rank of Captain I.

12 135. In April of 2019, Plaintiff Vigueras executed active-duty military orders  
13 with the USAR to support Operation Inherent Resolve. During this time, he was a  
14 military operations planner for a joint task force, coordinating with other U.S. agencies  
15 to counter terrorist organizations in the region. He additionally served as an Engagement  
16 Officer for a unit that advised and assisted the Palestinian Authority Police Services.

17 136. Upon Plaintiff Vigueras' return to work in August of 2021, he requested  
18 to take the Captain I promotion examination. He conducted the written portion of the  
19 exam that month, and then the oral portion that following September.

20 137. During the oral examination, Plaintiff Vigueras informed the LAPD board  
21 that he intended to retire from the USAR, and how his recent deployment experiences  
22 qualified him for the position of Captain I.

23 138. On October 7, 2021, the Administrative Services Bureau of the LAPD  
24 announced the revised names and "whole score grades" of the candidates for promotion  
25 to the rank of Captain I. Plaintiff Vigueras was placed in the Rank 3 category, with a  
26

1 “whole score grade” of 81.

2 139. Upon information and belief, Plaintiff Vigueras’ qualifications for  
3 promotion were superior to many of the candidates selected for promotion to Captain I  
4 in the LAPD from October 7, 2021 list. Plaintiff Vigueras had greater experience,  
5 training, education, credentials, and overall performance than several candidates  
6 selected for promotion to Captain I.

7 140. Despite Plaintiff Vigueras’ qualifications, he was not selected for  
8 promotion to Captain.

9 141. Upon information and belief, the October 7, 2021 list included at least four  
10 other candidates eligible for promotion to the rank of Captain I with military service  
11 obligations: Mr. Quan, Mr. Martinez, and Plaintiff Russo in Rank 3, and Plaintiff Craig  
12 in Rank 4.

13 142. Neither Plaintiff Craig nor Plaintiff Russo were selected for promotion to  
14 Captain I. Upon information and belief, neither Mr. Quan nor Mr. Martinez were  
15 selected for promotion to Captain I.

16 143. Upon information and belief, LAPD promoted at least two of the  
17 candidates from the October 7, 2021 list in the Rank 6 category to the rank of Captain  
18 I.

19 144. Rather than face the embarrassment and humiliation of not being selected  
20 for promotion to Captain I again despite his extensive credentials and qualifications for  
21 the position, Plaintiff Vigueras chose to retire from the LAPD as a Police Lieutenant I,  
22 effective July 31, 2022.

23 **V. CLASS ACTION ALLEGATIONS**

24 145. Plaintiffs bring this action on behalf of themselves, and all others similarly  
25 situated, as a class action pursuant to Rule 23(a) and 23(b)(1), 23(b)(2), and/or (b)(3) of  
26

1 the Federal Rules of Civil Procedure. The nationwide Class which Plaintiffs seek to  
2 represent are current and former employees of LAPD who are or were members of the  
3 United States Armed Services Reserves or National Guard and who took or have taken  
4 military leave while being employed by LAPD.

5 146. Plaintiffs are members of the Class they seek to represent.

6 147. The members of the Class are sufficiently numerous such that joinder of  
7 all members is impracticable. LAPD is the third-largest police department in the United  
8 States and employs over 12,000 persons. Although this number does not specify those  
9 who did serve or are actively serving in the National Guard or Reserves, Plaintiffs are  
10 informed and believe that the Class exceeds 100 present and former Company  
11 employees. The exact size of the Class is ascertainable through LAPD and COLA  
12 records, including but not limited to LAPD and COLA's employment records.

13 148. There are questions of law and fact common to the Class, and these  
14 questions predominate over individual questions. Such questions include, without  
15 limitation:

16 A. whether LAPD's practice of allowing vacation and sick  
17 time to accrue for employees on paid military leave but not  
18 for employees on comparable, unpaid military leave  
19 violates USERRA;

20 B. whether LAPD's practice of providing differential pay to  
21 employees on military leave who perform certain types of  
22 military service, while denying differential pay to  
23 employees who performed other types of military service  
24 violates USERRA;

25 C. whether LAPD's practice of limiting the amount of paid  
26 military leave to 174 hours, violates the California

1 Military and Veterans Code Section 395.02<sup>2</sup>;

2 D. whether LAPD's practice of reducing the number of credit  
3 hours converted from days to less than eight (8) hours per  
4 day for military leave only, while allowing eight (8) credit  
5 hours per days for other comparable forms of non-military  
6 leave violates USERRA;

7 E. whether LAPD's practice of requiring employees to  
8 submit three (3) copies of military orders to LAPD before  
9 military leave will be "approved" violates USERRA;

10 F. whether LAPD's practice of requiring employees to  
11 complete an Employee Report Form 15.7 before military  
12 leave will be "approved" violates USERRA;

13 G. whether LAPD's practice of requiring employees to a  
14 Military Leave Notification Form (LAPD Form 1.36.05)  
15 to the Military Liaison before military leave will be  
16 "approved" violates USERRA;

17 H. whether LAPD's practice of requiring employees to  
18 submit DD-214 forms to LAPD upon completion of  
19 military leave violates USERRA;

20 I. whether LAPD's practice of requiring employees to  
21 undergo psychological testing upon completion of military  
22 leave; but not for other employees returning from other  
23 forms of leave violates USERRA;

24 J. whether LAPD's practice of denying promotions to  
25 military servicemember employees who perform military  
26 service obligations violates USERRA;

K. whether LAPD's acts and practices have violated  
USERRA by discriminating against its employees who are  
members of the National Guard or Reserves and have

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<sup>2</sup> Plaintiffs will timely amend this Complaint to allege violations of the CA MVC after complying with applicable government claims process requirements.

1 taken military leave;

2 L. whether Plaintiffs and the Class are entitled to  
3 compensatory and/or liquidated damages, and;

4 M. whether injunctive and other equitable remedies for the  
5 Class are warranted.

6 149. The named Plaintiffs will fairly and adequately represent and protect the  
7 interests of the Class and have no conflict of interests with the Class.

8 150. Plaintiffs know of no difficulty to be encountered in the management of  
9 this action that would preclude its maintenance as a class action. Plaintiffs retained  
10 adequate counsel who have substantial experience and success in the prosecution of  
11 class actions, including USERRA class actions, and complex business litigation  
12 matters.

13 151. Class certification is also appropriate pursuant to Fed. R. Civ. Proc. Rule  
14 23(b)(2) because the Company has acted on grounds generally applicable to the Class,  
15 making appropriate declaratory and injunctive relief to Plaintiffs and the Class as a  
16 whole. The Class members are entitled to injunctive relief to end the Company's  
17 practices that have caused military affiliated employees to be terminated because of  
18 their military service obligations and to be treated differently than employees without  
19 military service obligations.

20 **VI. FIRST CAUSE OF ACTION – Sick Time Accrual, Violations of 38 U.S.C.**  
21 **§ 4301, et seq.**

22 152. Plaintiffs hereby allege and incorporate all paragraphs 1-151 above by  
23 reference herein.

24 153. Employees on military leave are entitled to the same non-seniority-based  
25 benefits provided to other employees on similarly-situated, non-military related leaves  
26 of absence. 38 U.S.C. § 4316(b)(1)(B).

154. Upon information and belief, LAPD employees taking paid military leave

1 of thirty days or less accumulate their full amount of sick time accrual as if they were  
2 not on a military leave of absence. LAPD employees taking unpaid military leave will  
3 only have their sick time replenished if they worked one day during the previous  
4 calendar year.

5 155. Upon information and belief, LAPD employees taking unpaid military  
6 leave are entitled to additional sick time because non-military employees accrue sick  
7 leave during longer periods of other types of non-military leave.

8 156. Plaintiffs and the Class's military service obligations were a motivating  
9 factor in LAPD's discriminatory actions.

10 157. LAPD knowingly and willfully violated USERRA, among other ways, by  
11 discriminating against Plaintiffs and the Class members, and by denying them  
12 employment benefits "on the basis of" their "obligation to perform service in a  
13 uniformed service."

14 158. As a direct and proximate result of the conduct of the LAPD, as set forth  
15 in this count, Plaintiffs and the Class have suffered injuries and damages including but  
16 not limited to loss of past and future benefits, all to their damage in an amount to be  
17 proven at trial.

18 159. Plaintiff alleges such violations of USERRA were willful and requests  
19 liquidated damages to the Class in an additional amount equal to the present value of  
20 their lost sick time benefits pursuant to Section 4323(d)(1)(C).

21 **VII. SECOND CAUSE OF ACTION – Vacation Time Accrual, Violations of 38**  
22 **U.S.C. § 4301, et seq.**

23 160. Plaintiffs hereby allege and incorporate all paragraphs 1-159 above by  
24 reference herein.

25 161. Employees on military leave are entitled to the same non-seniority-based  
26 benefits provided to other employees on similarly-situated, non-military related leaves

1 of absence. 38 U.S.C. § 4316(b)(1)(B).

2 162. Upon information and belief, LAPD has a regular days off (“RDO”) policy  
3 wherein employees are entitled to eight regular days off during a 28-day deployment  
4 period. Additionally, employees are entitled to thirteen days off in lieu of holidays for  
5 each year.

6 163. Upon information and belief, LAPD reduces an employee’s unused RDOs  
7 and/or holiday time off by one day for every three and one-quarter days an employees  
8 is absent from duty due to taking paid military leave and/or unpaid military leave.

9 164. Upon information and belief, non-military LAPD employees do not have  
10 their RDOs or holiday time reduced when taking other types of non-military leave.

11 165. Upon information and belief, LAPD employees taking paid military leave  
12 of thirty days or less accumulate their full amount of vacation time accrual as if they  
13 were not on a military leave of absence. LAPD employees taking unpaid military leave  
14 have their vacation time prorated according to the amount of time they were on unpaid  
15 military leave the previous calendar year.

16 166. Upon information and belief, LAPD employees taking unpaid military  
17 leave are entitled to additional vacation time because non-military employees accrue  
18 sick leave during periods of other types of non-military leave.

19 167. Plaintiff’s and the Class’s military service obligations were a motivating  
20 factor in LAPD’s discriminatory actions.

21 168. LAPD knowingly and willfully violated USERRA, among other ways, by  
22 discriminating against Plaintiffs and the Class members, and by denying them  
23 employment benefits “on the basis of” their “obligation to perform service in a  
24 uniformed service.”

25 169. As A direct and proximate result of the conduct of LAPD as set forth in  
26



1 this count, Plaintiffs and the Class have suffered injuries and damages including but not  
2 limited to loss of past and future benefits, with damages in an amount to be proven at  
3 trial.

4 170. Plaintiffs allege such violations of USERRA were willful and request  
5 liquidated damages to the Class in an additional amount equal to the present value of  
6 their lost vacation time benefits pursuant to Section 4323(d)(1)(C).

7 **VIII. THIRD CAUSE OF ACTION – Differential Pay, Violations of 38 U.S.C. §**  
8 **4301, et seq.**

9 171. Plaintiffs hereby allege and incorporate all paragraphs 1-170 above by  
10 reference herein.

11 172. Upon information and belief, an LAPD employee is entitled to 174 hours  
12 of paid military leave for certain types of military service.

13 173. Upon information and belief, the COLA provides differential pay (the  
14 difference between their LAPD pay and military pay, if their military pay is less) to  
15 LAPD employees after exhaustion of the LAPD 174 hours of paid military leave for  
16 performing certain types of military service. These “enhanced military leave benefits”  
17 also include continued medical and dental insurance for the employee and their  
18 beneficiaries during the employee’s military service period.

19 174. Upon information and belief, the COLA only permits payment of the  
20 enhanced military leave benefits for employees performing military service for specific  
21 contingency operations, such as Operation Enduring Freedom. The COLA does not  
22 offer enhanced military leave benefits for employees performing other types of military  
23 service, such as military schools, professional military education, and non-contingency  
24 operations.

25 175. The COLA and LAPD’s policy and practice of enhanced military leave  
26 benefits to its employees performing military service other than contingency operations



1 violates USERRA.

2 176. Plaintiffs and the Class's protected status as members of the military was  
3 a motivating factor in LAPD's denial of benefits, conditions, and privileges of  
4 Plaintiffs' employment, to include denying enhanced military leave benefits without  
5 good cause, and as a result of their military responsibilities.

6 177. LAPD knowingly and willfully violated USERRA, among other ways, by  
7 discriminating against Plaintiffs and the Class members, and by denying them enhance  
8 military leave benefits "on the basis of" their "obligation to perform service in a  
9 uniformed service."

10 178. As A direct and proximate result of the conduct of LAPD as set forth in  
11 this count, Plaintiffs and the Class have suffered injuries and damages including but not  
12 limited to loss of past and future enhanced military leave benefits, with damages in an  
13 amount to be proven at trial.

14 179. Plaintiffs allege such violations of USERRA were willful and request  
15 liquidated damages to the Class in an amount equal to the amount of denied past and  
16 future enhanced military leave benefits in an amount to be proven at trial.

17 **IX. FOURTH CAUSE OF ACTION – Unlawful Military Leave "Approval"**  
18 **Requirements, Violations of 38 U.S.C. § 4301, et seq.**

19 180. Plaintiffs hereby allege and incorporate all paragraphs 1-179 above by  
20 reference herein.

21 181. USERRA expressly supersedes any state or local law, agreement, and/or  
22 employer policy. 38 U.S.C. § 4302(b); 20 C.F.R. § 1002.7(b).

23 182. An employee need not request time off or permission to perform military  
24 service obligations. The employee must give notice to the employer, such notice may  
25 be verbal or written, and need not follow any particular format. 20 C.F.R. §§ 1002.87;  
26 1002.85(b).

1 183. An employee need not provide documentation prior to performing periods  
2 of military service obligations, only upon reemployment after periods of service of more  
3 than thirty days. 20 C.F.R. §§ 1002.121; 1002.122; 1002.123.

4 184. Upon information and belief, the LAPD requires employees performing  
5 military service to complete an “Employee’s Report, Form 153.07.00” to their  
6 respective LAPD Commanding Officer, and supply three certified copies of military  
7 orders and a “Military Leave Notification, Form 01.36.05.” to the LAPD Records  
8 Division, prior to their military leave being approved.

9 185. LAPD knowingly and willfully violated USERRA, among other ways, by  
10 discriminating against Plaintiffs and the Class members by requiring them to provide  
11 an onerous and unlawful process before their military leave would be approved.

12 186. Plaintiffs and the Class allege such violations of USERRA were willful  
13 and request liquidated damages to the Class in an amount to be proven at trial.

14 **X. FIFTH CAUSE OF ACTION – Discriminatory Re-employment**  
15 **Requirements, Violations of 38 U.S.C. § 4301, et seq.**

16 187. Plaintiffs hereby allege and incorporate all paragraphs 1-186 above by  
17 reference herein.

18 188. Section 4312 of USERRA provides:

19 [A]ny person whose absence from a position of employment  
20 is necessitated by reason of service in the uniformed services  
21 shall be entitled to the reemployment rights and benefits and  
22 other employment benefits of this chapter...

23 38 U.S.C. §4312(a).

24 189. Section 4313 of USERRA (further codified by 20 C.F.R. § 1002.191)  
25 provides that an employee is entitled to be reemployed in a position that reflects with  
26 reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she

1 would have attained if not for the period of service.

2 190. Section 4316 of USERRA provides that any period of absence from  
3 employment due to or necessitated by uniformed service is not considered a break in  
4 employment, so an employee absent due to military duty must be treated as though they  
5 were continuously employed.

6 191. Section 4316 further provides that a person who is reemployed “is entitled  
7 to the seniority and other rights and benefits determined by seniority that the person had  
8 on the date of the commencement of service in the uniformed services plus the  
9 additional seniority and rights and benefits that such person would have attained if the  
10 person had remained continuously employed.”

11 192. “The employer must determine the seniority rights, status, and rate of pay  
12 as though the employee had been continuously employed during the period of service.”  
13 20 C.F.R. §1002.193.

14 193. Upon information and belief, LAPD employees returning from military  
15 service are subject to a reintegration interview, medical examinations, psychological  
16 examinations, background checks, and reintegration training which may include repeat  
17 completion of the LAPD Academy, Structured Field Training Program, and/or other  
18 tactical, firearms, and POST training before returning to full duty.

19 194. Upon information and belief, the LAPD additionally requires employees  
20 returning from military service to provide a copy of Department of Defense Form 214  
21 (DD-214) to the LAPD Return to Work Section.

22 195. Upon information and belief, other LAPD employees taking non-military  
23 leaves of absence are not subject to the same reintegration process as those who have  
24 taken military leave.

25 196. LAPD’s reemployment policy and practice for employees performing  
26

1 military service violates USERRA.

2 197. Plaintiffs and the Class's protected status as members of the military was  
3 a motivating factor in LAPD's denial of benefits, conditions, and privileges of  
4 Plaintiffs' employment, to include unlawful reemployment practices, and as a result of  
5 their military responsibilities.

6 198. LAPD knowingly and willfully violated USERRA, among other ways, by  
7 discriminating against Plaintiffs and the Class members, and by denying them prompt  
8 reemployment "on the basis of" their "obligation to perform service in a uniformed  
9 service."

10 199. As A direct and proximate result of the conduct of LAPD as set forth in  
11 this count, Plaintiffs and the Class have suffered injuries and damages including but not  
12 limited to loss of past and future benefits, with damages in an amount to be proven at  
13 trial.

14 200. Plaintiffs allege such violations of USERRA were willful and request  
15 liquidated damages to the Class in an amount equal to the amount of denied past and  
16 future benefits in an amount to be proven at trial.

17 201. Plaintiffs allege such violations of USERRA were willful and request  
18 liquidated damages to the Class in an amount to be proven at trial.

19 **XI. SIXTH CAUSE OF ACTION – Failure to Promote Based on Military**  
20 **Service Obligations, Violations of 38 U.S.C. § 4301, et seq.**

21 202. Plaintiffs hereby allege and incorporate all paragraphs 1-201 above by  
22 reference herein.

23 203. USERRA prohibits "discrimination against persons because of their  
24 service in the uniformed services." 38 U.S.C. §4301(a)(3).

25 204. Section 4311(a) of USERRA states in relevant part, that a person "who is  
26 a member of... performs, has performed...or has an obligation to perform service in a

1 | uniformed service shall not be denied... promotion...or any benefit of employment by  
2 | an employer on the basis of that membership... performance of service, or obligation.”  
3 | (emphasis added).

4 |       205. Section 4311(c) further provides, in relevant part, that “[an] employer shall  
5 | be considered to have engaged in actions prohibited... if the person’s membership... or  
6 | obligation for service in the uniformed services is a motivating factor in the employer’s  
7 | action.”

8 |       206. LAPD’s policy and practice of denying promotions to its employees due  
9 | to their taking leave to perform military duty violates USERRA.

10 |       207. Plaintiffs and the Class’s protected status as members of the military was  
11 | a motivating factor in LAPD’s denial of benefits, conditions, and privileges of  
12 | Plaintiffs’ employment, to include denying promotions to higher ranks in the LAPD  
13 | without good cause, and as a result of their military responsibilities.

14 |       208. LAPD knowingly and willfully violated USERRA, among other ways, by  
15 | discriminating against Plaintiffs and the Class members, and by denying them  
16 | promotion and employment benefits “on the basis of” their “obligation to perform  
17 | service in a uniformed service.”

18 |       209. As A direct and proximate result of the conduct of LAPD as set forth in  
19 | this count, Plaintiffs and the Class have suffered injuries and damages including but not  
20 | limited to loss of past and future benefits, with damages in an amount to be proven at  
21 | trial.

22 |       210. Plaintiffs allege such violations of USERRA were willful and request  
23 | liquidated damages to the Class in an additional amount equal to the amount of lost  
24 | wages and future earnings related to denied promotions, to be proven at trial.

25 |       211. USERRA prohibits “discrimination against persons because of their  
26 |

1 service in the uniformed services.” 38 U.S.C. §4301(a)(3).

2 212. Section 4311(a) of USERRA states in relevant part, that a person “who is  
3 a member of... performs, has performed...or has an obligation to perform service in a  
4 uniformed service shall not be denied... promotion...or any benefit of employment by  
5 an employer on the basis of that membership... performance of service, or obligation.”  
6 (emphasis added).

7 213. Section 4311(c) further provides, in relevant part, that “[an] employer shall  
8 be considered to have engaged in actions prohibited... if the person’s membership... or  
9 obligation for service in the uniformed services is a motivating factor in the employer’s  
10 action.”

11 214. “Benefit” is defined as:  
12 The term ‘benefit’, ‘benefit of employment’, or ‘rights and  
13 benefits’ means the terms, conditions, or privileges of  
14 employment, including any advantage, profit, privilege, gain,  
15 status, account, or interest (including wages or salary for work  
16 performed) that accrues by reason of an employment contract  
17 or agreement or an employer policy, plan, or practice and  
18 includes rights and benefits under a pension plan, a health  
19 plan, an employee stock ownership plan, insurance coverage  
and awards, bonuses, severance pay, supplemental  
unemployment benefits, vacations, and the opportunity to  
select work hours or location of employment.”

20 38 U.S.C. §4303(2).

21 215. A “benefit of employment” includes the right to select work hours or the  
22 location of employment. 20 C.F.R. §1002. 5(b).

23 216. In the Department of Labor’s Fiscal Year 2010 report to Congress  
24 (published in July 2011), the department clarified its interpretation that a “benefit of  
25 employment” included freedom from workplace harassment and/or a hostile work  
26 environment:

1  
2 The Department of Labor considers it a violation of USERRA  
3 for an employer to cause or permit workplace harassment, the  
4 creation of a hostile working environment, or to fail to take  
5 prompt and effective action to correct harassing conduct  
because of an individual's membership in the uniformed  
service or uniformed service obligations.

6 Department of Labor (USERRA) Fiscal Year 2010 Report to Congress.

7 217. USERRA's definition of "service in the uniformed services" covers all  
8 categories of military training and service, including duty performed on a voluntary or  
9 involuntary basis, in time of peace or war. 38 U.S.C. §4312(e)(1)(A)(i); 20 C.F.R.  
10 §1002.115. (emphasis added).

11 218. Section 4312 of USERRA provides:

12 [A]ny person whose absence from a position of employment  
13 is necessitated by reason of service in the uniformed services  
14 shall be entitled to the reemployment rights and benefits and  
15 other employment benefits of this chapter...

16 38 U.S.C. §4312(a).

17 219. Section 4313 of USERRA (further codified by 20 C.F.R. § 1002.191)  
18 provides that an employee is entitled to be reemployed in a position that reflects with  
19 reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she  
20 would have attained if not for the period of service.

21 220. Section 4316 of USERRA provides that any period of absence from  
22 employment due to or necessitated by uniformed service is not considered a break in  
23 employment, so an employee absent due to military duty must be treated as though they  
24 were continuously employed.

25 221. Section 4316 further provides that a person who is reemployed "is entitled  
26 to the seniority and other rights and benefits determined by seniority that the person had



1 on the date of the commencement of service in the uniformed services plus the  
2 additional seniority and rights and benefits that such person would have attained if the  
3 person had remained continuously employed.”

4 222. “The employer must determine the seniority rights, status, and rate of pay  
5 as though the employee had been continuously employed during the period of service.”  
6 20 C.F.R. §1002.193.

7 223. USERRA expressly supersedes any state or local law, agreement, and/or  
8 employer policy. 38 U.S.C. § 4302(b); 20 C.F.R. § 1002.7(b).

9 224. An employee need not request time off or permission to perform military  
10 service obligations. The employee must give notice to the employer, such notice may  
11 be verbal or written, and need not follow any particular format. 20 C.F.R. §§ 1002.87;  
12 1002.85(b).

13 225. An employee need not provide documentation prior to performing periods  
14 of military service obligations, only upon reemployment after periods of service of more  
15 than thirty days. 20 C.F.R. §§ 1002.121; 1002.122; 1002.123.

16 226. USERRA provides at a minimum, an employee must have enough time  
17 after leaving the employment position to travel safely to the uniformed service site and  
18 arrive fit to perform the service. “If the employee performs a full overnight shift for the  
19 civilian employer and travels directly from the work site to perform a full day of  
20 uniformed service, the employee would not be considered fit to perform the uniformed  
21 service. An absence from that work shift is necessitated so that the employee can report  
22 for uniformed service fit for duty.” 20 C.F.R. § 1002.74(a).

23 227. An employee may use any paid time off (“PTO”) during his or her period  
24 of military leave, but an employer may not require the employee to use accrued  
25 vacation, annual, or similar leave during a period of service in the uniformed services.  
26



1 38 U.S.C. § 4316(d); 20 C.F.R. §1002.153.

2 228. Plaintiffs' protected status as members of the military was a motivating  
3 factor in LAPD's denial of benefits, conditions, and privileges of Plaintiffs'  
4 employment, to include denying promotions to higher ranks in the LAPD without good  
5 cause, and as a result of their military responsibilities.

6 229. One of the benefits of employment available to the Plaintiffs and the Class  
7 is the right to retention in employment while performing their military service  
8 obligations, and to be provided the same seniority rights, status, and rate of pay as  
9 though the employee had been continuously employed during the period of service.

10 230. LAPD's policy and practice of denying promotions to its employees due  
11 to their taking leave to perform military duty violates USERRA.

12 231. LAPD's policy of denying training opportunities to its employees due to  
13 their taking leave to perform military duty violates USERRA.

14 232. Plaintiffs and the Class's military service obligations were motivating  
15 factors in LAPD's discriminatory actions.

16 233. LAPD knowingly and willfully violated USERRA, including but not  
17 limited to Section 4311, 4312, 4313 and 4316, among other ways, by discriminating  
18 against Plaintiffs and the Class members, and by denying them employment benefits  
19 "on the basis of" their "obligation to perform service in a uniformed service."

20 234. As a direct and proximate result of the conduct of LAPD, as set forth in  
21 this count, Plaintiffs and the Class have suffered injuries and damages including but not  
22 limited to loss of past and future benefits, all to their damage in an amount to be proven  
23 at trial.

24 235. Plaintiffs alleges such violations of USERRA were willful and request  
25 liquidated damages to the Class in an additional amount equal to the present value of  
26

1 their lost wages and other benefits pursuant to Section 4323(d)(1)(C).

2 **JURY DEMAND**

3 236. Pursuant to Federal Rule of Civil Procedure 38 or any similar rule or law,  
4 Plaintiffs demand a trial by jury for all causes of action and issues for which trial by  
5 jury is available.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, based on the foregoing, Plaintiffs pray for relief against  
8 Defendants, and each of them, as follows:

9 1. Determine that this action may proceed and be maintained as a class action,  
10 designating Plaintiffs as Lead Plaintiffs, and certifying Plaintiffs as the Class  
11 representatives under Rule 23 of the Federal Rules of Civil Procedure and their counsel  
12 of record as Class Counsel;

13 2. Declare that the acts and practices complained of herein are unlawful and  
14 are in violation of USERRA;

15 3. Require that LAPD and COLA fully comply with the provisions of  
16 USERRA by providing Plaintiffs and Class Members all employment benefits denied  
17 them as a result of LAPD and COLA's unlawful acts and practices described herein;

18 4. Enjoin LAPD and COLA from taking any action against Plaintiffs and  
19 members of the Class that fail to comply with the provisions of USERRA;

20 5. Award fees and expenses, including attorneys' fees pursuant to 38 U.S.C.  
21 §4323(h);

22 6. Award Plaintiffs and the Class prejudgment interest on the amount of lost  
23 wages or employment benefits due;

24 7. Order that LAPD and COLA pay compensatory and/or liquidated damages  
25 in an amount equal to the amount of lost compensation and other benefits suffered due  
26

1 to its willful violations of USERRA;

2 8. Grant an award for costs of suit incurred; and

3 9. Grant such other and further relief as may be just and proper and which  
4 Plaintiffs and the Class may be entitled to under all applicable laws.

5 DATED: August 11, 2023

6  
7 /s/ Brian J. Lawler  
8 Brian J. Lawler  
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